

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICK SHAWN,

Case No. 3:24-cv-00476-ART-CLB

Petitioner,

DISMISSAL
ORDER

v.

TERRY ROYAL, *et al.*,

Respondents.

Pro se Petitioner Rick Shawn filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on October 16, 2024. (ECF No. 1-1.) Following an initial review of Shawn's Petition, this Court issued an order, instructing Shawn to show cause why his Petition should not be dismissed for a lack of jurisdiction based on the Petition being second or successive. (ECF No. 7.) Specifically, this Court found that (1) Shawn's Petition challenged the same July 7, 2011, judgment of conviction that was challenged in case number 2:14-cv-00738-JAD-PAL, and (2) the petition filed in case number 2:14-cv-00738-JAD-PAL was dismissed with prejudice. (*Id.* at 3.)

On December 2, 2024, Shawn responded to the order to show cause. (ECF No. 9.) Shawn explained that (1) his current Petition raises different claims than were raised in case number 2:14-cv-00738-JAD-PAL, (2) his current Petition is based on a claim of actual innocence, and (3) his first jury trial resulted in an acquittal, which negated the state court's jurisdiction over his convictions in this matter. (*Id.*) These explanations fail to demonstrate that the Petition is not second or successive. *See* 28 U.S.C. § 2244. Accordingly, because Shawn has not been given permission by the Court of Appeals for the Ninth Circuit to file his Petition, this Court lacks jurisdiction over this matter. However, this Court will exercise its discretionary authority to transfer the Petition to the Court of Appeals for the Ninth Circuit for consideration as an application for leave to file a second-or-

1 successive petition. See 28 U.S.C. § 1631; 9th Cir. R. 22-3.

2 It is therefore ordered that the Petition (ECF No. 1-1) is referred to the Court
3 of Appeals for the Ninth Circuit for consideration as an application for leave to
4 file a second or successive habeas corpus petition pursuant to Ninth Circuit Rule
5 22-3(a).

6 It is further ordered that the Petition is dismissed without prejudice to its
7 refiling should Shawn obtain permission to do so from the Court of Appeals for
8 the Ninth Circuit. To the extent such analysis is required, a certificate of
9 appealability is denied as reasonable jurists would not find the dismissal of the
10 Petition to be debatable or wrong for the reasons discussed herein.

11 It is further ordered that the motion for appointment of counsel (ECF No.
12 1-2) is denied as moot.

13 It is further ordered that the Clerk of Court (1) file the Petition (ECF No. 1-
14 1); (2) send a copy of the Petition (ECF No. 1-1), response to the order to show
15 cause (ECF No. 9), and this Order to the Court of Appeals for the Ninth Circuit;
16 (3) add Nevada Attorney General Aaron D. Ford as counsel for Respondents;¹ (4)
17 provide the Nevada Attorney General with copies of the Petition (ECF No. 1-1),
18 this Order, and all other filings in this matter by regenerating the notices of
19 electronic filing; (5) enter judgment; and (6) close this case.

20 DATED THIS 13th day of February 2025.

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23 ANNE R. TRAUM
24 UNITED STATES DISTRICT JUDGE

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28 ¹No response is required from Respondents other than to respond to any orders
of a reviewing court.